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## **DEPARTMENT OF HOMELAND SECURITY**

### **U.S. Customs and Border Protection**

#### **19 CFR Part 4**

#### **CBP Dec. 14-11**

#### **Technical Amendment: Boarding of Vessels at CBP Ports**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This document amends the U.S. Customs and Border Protection (CBP) regulations to conform to U.S. Coast Guard implementing regulations regarding certain boardings of vessels under the Maritime Transportation Act of 2002, as amended (MTSA). Under MTSA, any person boarding a vessel arriving at a CBP port after that vessel is taken in charge by a CBP officer must comply with Transportation Worker Identification Credential requirements. This document also updates terminology and removes obsolete language in the relevant regulatory section.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**FOR FURTHER INFORMATION CONTACT:** Craig Clark, Office of Field Operations, U.S. Customs and Border Protection, (202) 344-3052, [OFO-ManifestBranch@cbp.dhs.gov](mailto:OFO-ManifestBranch@cbp.dhs.gov).

**SUPPLEMENTARY INFORMATION:**

## **I. Background**

It is the policy of U.S. Customs and Border Protection (CBP) to periodically review title 19 of the Code of Federal Regulations (19 CFR) to ensure that it is accurate and up-to-date so that the general public is aware of CBP requirements and procedures. As part of this review policy, CBP has determined that certain corrections affecting part 4 of the CBP regulations (19 CFR part 4) are necessary.

### **A. Maritime Transportation Act of 2002**

The Maritime Transportation Act of 2002 (MTSA), Pub. L. 107-295, 116 Stat. 2064, as amended by the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Pub. L. 109-347, 120 Stat. 1884, requires DHS to promulgate regulations addressing maritime security. Specifically, section 102 of the MTSA (46 U.S.C. 70105) requires DHS to issue regulations to prevent individuals from entering secure areas of vessels or MTSA-regulated port facilities unless such individuals are authorized to be in the secure areas and either hold biometric transportation security cards issued under section 102 or are accompanied by another individual who holds such a transportation security card.

### **B. MTSA Implementing Regulations**

In 2003, DHS, through the U.S. Coast Guard (Coast Guard), issued two rules amending various regulations to implement the maritime security provisions of the MTSA.<sup>1</sup> The MTSA regulations set out specific requirements for owners and operators of vessels, facilities, and Outer Continental Shelf facilities that are identified by the Secretary of Homeland Security as posing a high risk of being involved in a

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<sup>1</sup> See “Implementation of National Maritime Security Initiatives” temporary interim rule, 68 FR 39240, July 1, 2003 and “Implementation of National Maritime Security Initiatives” final rule, 68 FR 60448, October 22, 2003, amending 33 CFR parts 101 and 102.

transportation security incident. The regulations require such owners and operators to implement security measures to ensure that a system is established for checking the identification of vessel and facility personnel or other persons seeking access to the vessel or facility. Also in 2003, the Coast Guard and Transportation Security Administration (TSA) were in the process of developing the Transportation Worker Identification Credential (TWIC), a biometrically enabled common credential to be used by U.S. transportation workers requiring unescorted access to secure areas throughout the maritime sector.<sup>2</sup>

On January 25, 2007, DHS, through the Coast Guard and the TSA, published a final rule and request for comments in the **Federal Register** (72 FR 3492) establishing the regulatory requirements implementing TWIC as mandated by the MTSA and the SAFE Port Act. On May 7, 2008, DHS, through the Coast Guard and TSA, published another final rule in the **Federal Register** (73 FR 25562) realigning the compliance date established in the aforementioned rule and requiring mariners to obtain a TWIC no later than April 15, 2009. This rule also established April 15, 2009, as the final date by which owners and operators of vessels, facilities, and outer continental shelf facilities must implement access control procedures utilizing TWIC. These rules amended the Coast Guard regulations regarding vessel and facility security to incorporate the TWIC requirements as an access control measure. See 33 CFR 101.105 and 101.514. These sections include a definition of TWIC and other relevant terms, the requirements for unescorted access to a vessel or facility, and the requirements for persons requiring escorted access to a vessel or facility.

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<sup>2</sup> See Id.

Coast Guard regulations also provide that an individual not in possession of a TWIC must present personal identification in order to gain entry to a Coast Guard-regulated vessel or facility.<sup>3</sup> The personal identification must, at a minimum, meet the following requirements: (1) be laminated or otherwise secure against tampering; (2) contain the individual's full name; (3) contain a photo that accurately depicts the individual's current facial appearance; and (4) bear the name of the issuing authority.<sup>4</sup> Additionally, the individual must be under escort while inside a secure area.

### **C. Explanation of Amendments**

CBP has determined that the MTSA and the implementing regulations, as discussed above, require conforming technical corrections to 19 CFR 4.1. Current § 4.1 prescribes the procedures regarding the boarding of vessels arriving at a CBP port and permits the CBP port director to grant unescorted access to these vessels to certain unscreened parties. Section 4.1(c) allows a port director to use his or her discretion to issue passes (referred to as cutter passes) on "Customs Form 3093" to allow certain persons to board incoming vessels. Section 4.1(f) allows a port director to use his or her discretion to issue term cutter and dock passes to persons on official business and certain news reporters and newspaper photographers for a period not to exceed one year. These provisions, which allow unescorted access to these vessels contradict the maritime security measures for access control required by the MTSA, the SAFE Port Act, and the implementing Coast Guard regulations mentioned above. In fact, CBP has not used Customs Form 3093 or issued cutter and dock passes for many years. Rather, CBP determines vessel access according to the applicable Coast Guard regulations. This

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<sup>3</sup> See 33 CFR 101.515.

<sup>4</sup> See 33 CFR 101.515.

technical correction updates the CBP regulations to conform to the current requirements and updates outdated terminology.

Specifically, CBP is amending 19 CFR 4.1 by:

- (1) Removing the obsolete reference to cutter and dock passes from the section heading;
- (2) Revising the entire section to reflect that “Customs” is now known as “CBP”;
- (3) Amending paragraph (c) by removing the obsolete language regarding cutter passes and Customs Form 3093 and by revising the paragraph to cross-reference the relevant Coast Guard regulations;
- (4) Deleting the previously reserved paragraph (e); and
- (5) Deleting the obsolete paragraph (f).

CBP is also abolishing the Customs Form 3093.

## **II. Statutory and Regulatory Requirements**

### **A. Inapplicability of Notice and Delayed Effective Date Requirements**

Because the technical corrections set forth in this document merely conform the regulatory text to existing law and update terminology, this document neither imposes additional burdens on nor takes away any existing rights or privileges from the public. Therefore, CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary under 5 U.S.C. 553(b)(B). For this same reason, pursuant to 5 U.S.C. 553(d)(3), CBP finds that good cause exists for dispensing with the requirement for a delayed effective date.

## **B. Regulatory Flexibility Act**

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

## **C. Executive Orders 12866 and 13563**

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563. The change is intended to remove obsolete discretionary provisions from the regulations to conform to existing law and update terminology. There are no new costs to the public associated with this rule. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

## **D. Signing Authority**

The signing authority for this document falls under 19 CFR 0.2(a) because the Secretary of Homeland Security has authority to regulate the boarding of vessels. The Secretary of Homeland Security has designated the Commissioner of U.S. Customs and Border Protection as the signatory on this technical amendment.

## **List of Subjects in 19 CFR Part 4**

Customs duties and inspection, Exports, Freight, Harbors, Maritime carriers, Reporting and recordkeeping requirements, Vessels.

## **Amendments to Regulations**

For the reasons stated in the preamble, part 4 of title 19 of the Code of Federal Regulations is amended as set forth below:

### **PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES**

1. The general authority citation for part 4 continues and the specific authority citation for § 4.1 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 70105.

Section 4.1 also issued under 19 U.S.C. 1581(a); 46 U.S.C. 60101; 46 U.S.C. 70105.

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2. Section 4.1 is amended as follows:

- a. Revise the section heading;
- b. Amend paragraphs (a) and (b) by removing the word “Customs” and adding in its place “CBP”, except where the word “Customs” is followed by the word “territory” or “formality”, and where the word “Customs” is followed by the word “territory” or “formality”, removing the word “Customs” and adding in its place “customs”;
- c. Revise paragraph (c); and
- d. Remove paragraphs (e) and (f).

The revision reads as follows:

#### **§ 4.1 Boarding of vessels.**

\* \* \* \* \*

(c) Persons seeking to board an incoming vessel after it has been inspected by the quarantine authorities and taken in charge by a CBP officer must comply with any applicable Coast Guard regulations regarding the Transportation Worker Identification Credential (TWIC)/personal identification requirements as prescribed in 33 CFR 101.105 and 101.514-515.

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DATE: November 20, 2014

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R. Gil Kerlikowske  
Commissioner

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